

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE
CONDITIONAL USE PERMIT ISSUED
BY GRAYS HARBOR COUNTY TO
RODERICK TIMBER COMPANY AND
DISAPPROVED BY THE DEPARTMENT
OF ECOLOGY,

RODERICK TIMBER COMPANY,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

SHB No. 80-39

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the request for review of a substantial development permit issued with a conditional use by Grays Harbor County but denied by the Department of Ecology, came before the Shorelines Hearings Board, Nat W. Washington, Chairman, and Gayle Rothrock, David Akana, Rodney Kerslake, and Ron Holtcamp, Members, convened at Lacey, Washington, on December 22, 1981. William A. Harrison, Administrative

1 Law Judge, presided.

2 Appellant Roderick Timber Company appeared by its representative,
3 Fred Abrahamson.. Respondent Department of Ecology appeared by
4 Wick Dufford, Assistant Attorney General. Reporter Lois Fairfield
5 recorded the proceedings.

6 Witnesses were sworn and testified. Exhibits were examined. From
7 testimony heard and exhibits examined, the Shorelines Hearings Board
8 makes these

9 FINDINGS OF FACT

10 I

11 Appellant, Roderick Timber Company (Roderick), owns a site of some
12 300 acres at Junction City near Aberdeen on the shore of the Chehalis
13 River. Of this, 40 acres adjacent to the river are developed as a log
14 exporting facility. Roderick conducted extensive dredging of the
15 river bottom to create a berth for ships alongside its dock. It has
16 filled or plans to fill a second 40 acres of the site with dredge
17 spoils. Grays Harbor County issued a shoreline substantial
18 development permit on December 19, 1975, allowing earth fill within
19 this second 40 acres. Although not proposed, that permit as issued
20 purported to allow wood waste fill as well. Grays Harbor County
21 amended the permit on December 30, 1975, by striking out the
22 authorization for wood waste fill. To this date Roderick has placed
23 no wood waste fill within the second 40 acres.¹

24
25 1. It has placed wood waste fill in ditches running outside the
26 limits of the second 40 acres from which earth was taken to construct
containment dikes that surround the second 40 acres.

II

On the first 40 acres which constitute the log export facility, logs are routinely stored and handled. When preparing logs for shipment, knots, limbs, and rot are removed which fall to the crushed rock surface of the yard. When cleaning up this wood waste (primarily hemlock) with heavy equipment, crushed rock becomes mixed with it creating what is called "yard spoils." Yard spoils consist of approximately 70 percent rock and 30 percent wood waste by volume. These must be disposed of in some way.

III

Roderick foresees the possibility of a sawmill, one day, on the second 40 acres. It is probable that more land would need to be filled, adjacent to the second 40 acres, to accommodate the sawmill complex.

IV

To accomplish a double objective, Roderick proposes to dispose of its yard spoils by filling 19.9 acres adjacent to the second 40 acres, thus increasing the buildable land available for a sawmill complex. Yard spoil fill would be more economical than earth fill including dredge spoil fill. The 19.9 acre site is within an "urban" shoreline designation.

V

The 19.9-acre site proposed for fill is within the 100-year

1. Cont.

This wood waste was placed to answer concerns of neighbors that the open ditches posed a safety threat to children.

1 floodplain of the Chehalis River. There is standing water on it for a
2 considerable part of the year. During winter the ground water table
3 is at the surface, and the area receives some 70 inches of rainfall
4 per year. A floristic survey of the site disclosed that vegetation
5 was comprised "mainly of willow thickets in standing water" and that
6 most species of plants are of a type described as occurring in wetlands
7 rather than uplands.

8 VI

9 Roderick proposes to seal the perimeter of the subject fill with
10 impervious diking, but would place the yard spoils directly upon the
11 ground. We find that the action of both ground water and
12 precipitation will cause the proposed yard spoil fill to release an
13 acidic, oxygen-consuming leachate. These leachates are toxic to small
14 organisms which form the base of the food chain. Since the yard spoil
15 fill will not be totally isolated from water, these leachates will
16 ultimately enter the nearby Elliot marsh and slough, then the Chehalis
17 River. Both the river and Elliot Slough are routes used by cutthroat
18 trout returning to the Department of Game hatchery on Elliot Slough.

19 VII

20 We find that the leachates which would be released by the yard
21 fill spoil would contaminate waters of the state and cause more
22 serious degradation of water quality than naturally occurring
23 leachates from surrounding land.²

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25 2. The area of the site has supported wood products mills for many
26 years. Consequently, a considerable volume of wood waste fill was
27 placed in times pre-dating environmental concerns. Addition of the
proposed yard spoil fill would perpetuate and compound past harm.

VIII

We find that yard spoils are solid waste. They are considered by the Grays Harbor County Health District which requires a solid waste permit for their disposal.

IX

The proposed fill would reduce accordingly the habitat of fish and small mammals which now occupy or use the site for food and shelter. The fill would also reduce the storage capacity of the flood plain increasing the possibility that adjacent property would be flooded in the future.

X

Authorization of the proposed yard spoil fill would establish precedent for other such fills, the cumulative effect of which would be to multiply the adverse effects upon water quality, fish and wildlife.

XI

Grays Harbor County issued a shoreline substantial development and conditional use permit to Roderick for the proposed yard spoil fill on September 15, 1980. Department of Ecology disapproved that permit on October 14, 1980. From this approval, Roderick appeals.

XII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER

1 CONCLUSIONS OF LAW

2 I

3 The Grays Harbor County Shoreline Master Program (GHCSMP)
4 specifically provides that a wood waste fill may only occur in the
5 urban environment as a conditional use. Chapter 20, Section 3,
6 page 47. Yard spoils constitute wood waste.

7 II

8 A conditional use must be denied unless the wood waste fill can
9 meet the conditional use requirements of both WAC 173-14-140(1) and
10 GHCSMP Chapter 33.

11 WAC 173-14-140(1) states:

12 (1) Uses which are classified or set forth in the
13 applicable master program as conditional uses may be
14 authorized provided the applicant can demonstrate all
15 of the following:

16 (a) That the proposed use will be consistent
17 with the policies of RCW 90.58.020 and the policies of
18 the master program.

19

20 (d) That the proposed use will cause no
21 unreasonably adverse effects to the shoreline
22 environment designation in which it is to be located.

23 (e) That the public interest suffers no
24 substantial detrimental effect.

25

26 (3) In the granting of all conditional use permits,
27 consideration shall be given to the cumulative impact
of additional requests for like actions in the area.
For example, if conditional use permits were granted
for other developments in the area where similar
circumstances exist, the total of the conditional uses
should also remain consistent with the policies of RCW
90.58.020 and should not produce substantial adverse
effects to the shoreline environment.

III

The proposed wood waste fill is inconsistent with the policy of RCW 90.58.020 of the Shoreline Management Act.³ It is also inconsistent with the GHCSMP requirements that:

1. Where landfill does occur, the fill material used shall be such that the leachate resulting from it will cause no more serious a degradation in water quality than naturally occurring leachate from surrounding lands. chapter 6, Section 4, page 33.

2. Existing solid waste landfills in shoreline areas should be abated as soon as possible, and no new solid waste landfills should be permitted in shoreline areas. Chapter 2, Section 7 (b), Page 9.

The proposed wood waste fill will cause unreasonably adverse effects upon the shoreline environment in regard to both water quality and fish life. In addition, a flood obstacle would be created. The public interest will accordingly suffer detrimental effect.

In addition, the cumulative effects of similar wood waste fills in the area would be inconsistent with RCW 90.58.020 and would produce substantial adverse effects upon the shoreline environment.

We conclude that the proposed wood waste fill does not meet the requirements of the Shoreline Management Act, WAC 173-14-140(1), or the GHSMMP, and that DOE's disapproval should be affirmed. See also

3. The policy of the SMA provides for protection against adverse effects to the waters of the State and their aquatic life. In the implementation of this policy, uses which are consistent with control of pollution and prevention of damage to the natural environment are preferred. Permitted uses must be designed and conducted in such a manner to minimize any resultant damage to the ecology and environment of the shoreline area. RCW 90.58.020.

1 DOE v. Dineen Shake and Shingle, Inc., and Grays Harbor County, SHB
2 No. 63 (1974), Brueher and Grays Harbor County v. DOE, SHB No. 79-18
3 (1979) and Daniels Cedar Products, Inc., v. DOE, SHB No. 80-32 (1981).

4 IV

5 Appellant has shown that the use of yard spoils as fill material
6 would be economical. Appellant has not carried its burden of proving,
7 however, that the use of such material is lawful. Should appellant
8 wish to pursue its plans for a sawmill complex or other construction,
9 it may, of course, propose fill materials other than yard spoils or
10 other wood waste. This would constitute a different proposal and be
11 entitled to fresh consideration under the applicable law.

12 V

13 Any Findings of Fact which should be deemed a Conclusion of Law is
14 hereby adopted as such.

15 From these Conclusions the Board enters this
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ORDER

The decision of the Department of Ecology disapproving this conditional use permit is affirmed.

DONE at Lacey, Washington, this 29th day of January, 1982.

SHORELINES HEARINGS BOARD

Nat W. Washington
NAT W. WASHINGTON, Chairman

Gayle Rothrock
GAYLE ROTHROCK, Vice Chairman

David Akana
DAVID AKANA, Member

Ronald L. Holtcamp
RONALD HOLTCAMP, Member

Rodney Kerslake
RODNEY KERSLAKE, Member

William A. Harrison
WILLIAM A. HARRISON,
Administrative Law Judge